

REMARKS

We are in receipt of the Office Action dated December 20, 2002, and the above Amendment and following remarks are made in light thereof.

In the Office Action, the Examiner makes a restriction requirement with respect to five different Markush groups appearing variously in the independent and dependent claims.

Initially, Applicant wishes to thank the Examiner for the patience and instruction provided in the several telephone calls discussing this matter. Applicant hopes that, in view of the foregoing Amendment and following remarks, the Examiner will be able to proceed with the substantive examination of this application.

Returning to the restriction requirement, the Examiner identified five different Markush groups: (a) single amino acids, (b) oligopeptide/polypeptide, (c) pharmaceutical alkalis, (d) anti-fungals, and (e) plant extracts.

By the foregoing Amendment, the only independent claim, Claim 39, contains no Markush groupings. All of the Markush groups appear in the dependent claims.

Applicant submits that the new Claims 39-63 should not be subject to a restriction requirement/election of species for the following reasons.

First, the new claims are related to a method for treating a specific disease using a composition comprising one or more amino acids and/or pharmaceutically acceptable salts thereof. The claims are not directed to amino acids per se. The invention includes not only the use of a single amino acid, but also various combinations of amino acids, with all of the combinations belonging to a single general concept. All of the amino acids and/or pharmaceutically acceptable salts thereof are used for the treatment of one particular condition, i.e., "the abnormality of high acidity in the vagina, wherein the vaginal pH value is lower than 4.0." Additionally, all of the amino acids have substantially the same structural feature that is essential to that utility. Specifically, there is a carboxyl group (-COOH) and an amino group (NH₂) on the alpha-carbon atom of all of the amino acids.

In the invention, the amino acids and/or pharmaceutically acceptable salts thereof act as buffer or alkaline substances with respect to vaginal acidity. They also have the biological characteristic of being a basic unit for protein synthesis so as to reduce the production of acidity by vaginal bacteria.

Applicant also notes that there are numerous issued patents that include Markush groups having similar compositions as those in the present application. See e.g., U.S. Patent No. 4,804,674, Claim 1, which calls for a method utilizing a

pharmaceutical composition comprising an effective amount of sperm motility enhancing agent selected from the group consisting of aspartic acid, glutamic acid, arginine, histidine, asparagines, glutamine and pharmaceutically acceptable salts thereof...". See also, U.S. Patent Nos. 4,937,234, Claims 1 and 2; U.S. Patent No. 5,622,927, Claim 1; U.S. Patent No. 4,670,256, Claim 5; and U.S. Patent No. 5,518,733, Claim 1.

With respect to the specific Markush groupings of the pharmaceutical alkalis, anti-fungals and plant extracts, the above-identified patents suggest that there is no need for an election of species with respect to these compositions.

Additionally, these compositions are not essential components of a composition defined in the single independent method Claim 39. They can be added to the composition set forth in Claim 1 for more effective treatment. However, the merit of the invention resides in the use of the amino acids. Once the patentability of Claim 39 is determined, the dependent claims should also be found to be allowable.

Applicant understands that in order for this response to be complete an election is required, even if the Applicant disagrees with the restriction requirement. Accordingly, Applicant provisionally makes the following election of species. With respect to Group (a), Applicant elects glutamic acid to be

examined first, followed by the other amino acids identified in Group (a).

With respect to Group (b), Applicant elects oligopeptide.

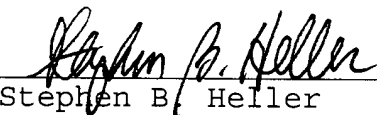
With respect to Group (c), Applicant elects sodium bicarbonate.

With respect to Group (d), Applicant elects Miconazole.

With respect to Group (e), Applicant elects Radix Sophorae Flavescentis.

Applicant reiterates that this election of species is provisional and earnestly hopes that the Examiner will be able to proceed with the examination of all of the presently pending Claims 39-63.

Respectfully submitted,



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